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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



Doc# 2021917019 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/06/2020 02:45 PM PG: 1 OF 24

The property identified as: PIN: 17-16-238-028-1026

**Address:**

Street: 235 W. VAN BUREN ST.

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60607

Lender: CLNC SL BLOOMINGTON, LLC

Borrower: KETUKMAR R. AMIN AND KOMALBALA M. PATEL

Loan / Mortgage Amount: \$19,500,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

CCH120034764 1/2

S   
P   
S   
M   
SC   
E   
INT

Certificate number: C41ABEAE-1893-4886-9A69-3EE6E5297495

Execution date: 7/30/2020

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Ketukumar R. Amin, an individual

and

Komalbala M. Patel, an individual

(Mortgagor)

to

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CLNC SL Bloomington, LLC  
(Mortgagee)

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

Effective: as of July 30, 2020

Property Location: 235 West Van Buren Street, Chicago, IL 60607: Units 2304; 1705;  
1804; 1504; 2207; 1907; 2919; 2422; 3822 and Parking #'s: 417, 381, 434, 13, 252, 25

### DOCUMENT PREPARED BY:

Akerman LLP  
50 North Laura Street, Suite 3100  
Jacksonville, FL 32202  
Attention: Beau Baker, Esq.  
Email: beau.baker@akerman.com

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This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "*Mortgage*"), made effective as of July 30, 2020, by **Ketukumar R. Amin**, an individual, having an address at 50 New Abbey Drive, Inverness, IL 60010 ("**Amin**"), and **Komalbala M. Patel**, an individual, having an address at 50 New Abbey Drive, Inverness, IL 60010 ("**Patel**"), and along with Amin, each an "*Mortgagor*" and collectively, "*Mortgagor*", to **CLNC SL Bloomington, LLC**, a Delaware limited liability company, having an address at c/o Colony Credit Real Estate, Inc., 515 South Flower Street, 44<sup>th</sup> Floor, Los Angeles, California 90071 (together with its successors and assigns, collectively, "*Mortgagee*").

Mortgagee, as lender, and VH-Minneapolis South Inc., an Illinois corporation ("*VH-Minn*"), as Borrower, have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "*Loan Agreement*") pursuant to which Mortgagee is making a secured loan to VH-Minn in the original principal amount of \$19,500,000.00 (the "*Loan*"). Capitalized terms used herein without definition are defined in the Loan Agreement. The Loan is evidenced by a Promissory Note dated the date hereof made by VH-Minn to Mortgagee in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "*Note*").

Mortgagor owns 100% of the beneficial interest in VH-Minn and has executed and delivered (i) that certain Guaranty of Recourse Obligations and (ii) that certain Guaranty of Completion, each dated as of the date hereof, each in favor of Lender, as the same may each be amended, restated, replaced, supplemented or otherwise modified from time to time (individually and collectively, the "*Guaranty*", and the Guaranty, the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be amended, modified, restated, replaced or supplemented from time to time, being hereinafter collectively referred to as the "*Loan Documents*").

To secure the payment of the Guaranty and all sums which may or shall become due thereunder, including, without limitation (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "*Bankruptcy Code*"), and (ii) the costs and expenses of enforcing any provision of the Guaranty (all such sums being hereinafter collectively referred to as the "*Guaranteed Obligations*"), Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, WITH POWER OF SALE, all of Mortgagor's right, title and interest in and to the land described in Exhibit A (the "*Premises*"), and the buildings, structures, fixtures and other improvements now or hereafter located on the Premises (the "*Improvements*");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are individually and collectively referred to herein as the "*Mortgaged Property*):

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(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter individually and collectively referred to as the "*Equipment*"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the "*UCC*"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases, licenses and other agreements or arrangements heretofore or hereafter entered into providing for the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter individually and collectively referred to as the "*Leases*") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and/or the Improvements, including all receivables, customer;

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obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter individually and collectively referred to as the "*Rents*"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Guaranteed Obligations;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property (in the case of a blanket policy of insurance, to the extent allocable to the Mortgaged Property), including the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all right, title, interest and claim of Mortgagor in, to, under or pursuant to the Interest Rate Cap Agreement, and all claims of Mortgagor for breach by any counterparty or interest rate cap seller (or any replacement counterparty or interest rate cap seller) of any covenant, agreement, representation or warranty contained in the Interest Rate Cap Agreement;

(h) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, leasing agreements, other brokerage agreements, all other agreements entered into in connection with the management, development and/or use of the Mortgaged Property, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refund of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter individually and collectively referred to as the "*Intangibles*"); and

(i) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

(j) Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

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**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee, and its heirs, successors and assigns, forever;

**PROVIDED, HOWEVER,** these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Guaranteed Obligations at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

**AND** Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

**1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Guaranteed Obligations at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes, and comply with Legal Requirements, each in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement and, notwithstanding anything to the contrary contained herein or under any provision of applicable law, any Proceeds paid by reason of any Insured Casualty coming into possession of Mortgagee shall not be deemed trust funds and Mortgagee shall be entitled to dispose of such Proceeds as provided by the Loan Agreement.

**2. Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Lockbox Account). Upon and during the continuation of an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagor hereby grants and assigns to Mortgagee the right, at Mortgagee's option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. To the extent permitted by applicable law, any Rents collected after the revocation of such license



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may be applied toward payment of the Guaranteed Obligations in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.9 of the Loan Agreement.

**3. Use of Mortgaged Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or (iii) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

## **4. Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Guaranteed Obligations, and (iii) Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Guaranteed Obligations, Mortgagee can recover the Guaranteed Obligations by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof (other than Permitted Encumbrances), or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(b) Mortgagee shall not be required to demonstrate any actual impairment of Mortgagee's security or any increased risk of default under the Loan Documents in order to declare the Guaranteed Obligations immediately due and payable upon any Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer.

**5. Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Guaranteed Obligations from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Guaranteed Obligations or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee is advised by its counsel that the payment of

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such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, or would provide the basis for a defense of usury, then Mortgagee shall have the option, by notice of not less than ninety (90) days, to declare the Guaranteed Obligations immediately due and payable.

**6. No Credits on Account of the Debt.** Mortgagor shall not claim or demand or be entitled to any credit on account of the Guaranteed Obligations for any part of the Taxes assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Guaranteed Obligations. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than ninety (90) days, to declare the Guaranteed Obligations immediately due and payable.

**7. Further Acts, Etc.** Mortgagor shall, at its sole cost, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan and the Loan Documents in connection with a "Secondary Market Transaction" as described in Section 9.1 of the Loan Agreement. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph.

**8. Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time at Mortgagee's request, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.



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**9. Right to Cure Defaults.** Upon the occurrence and during the continuation of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Guaranteed Obligations, and the cost and expense thereof (including, to the extent permitted under applicable law, reasonable attorneys' fees and disbursements), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Guaranteed Obligations, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

## **10. Remedies.**

(a) Upon the occurrence and during the continuation of any Event of Default, Mortgagee may take such action, without notice or demand (except for such as may be prohibited under applicable law) as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare the entire Guaranteed Obligations to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Guaranteed Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Guaranteed Obligations not then due;

(iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

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(vi) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Guaranteed Obligations and without regard for the solvency of the Mortgagor or of any Person liable for the payment of the Guaranteed Obligations;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Mortgaged Property to the payment of the Guaranteed Obligations in accordance with the Loan Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees in connection herewith;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

In addition to any other remedies provided to Mortgagee hereunder, pursuant to the Loan Agreement or the other Loan Documents, upon the occurrence and during the continuation of an Event of Default, to the extent permitted by applicable law, Mortgagee or the agent or successor of Mortgagee may sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of same, in accordance with the terms and provisions of applicable law.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

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(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Guaranteed Obligations and the Guaranteed Obligations in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) [Intentionally deleted.]

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Guaranteed Obligations or the Guaranteed Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined in Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable under the Loan Documents shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee and no extension of time for the payment of the whole or any portion of the Guaranteed Obligations or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Guaranteed Obligations. No waiver by

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Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All reasonable out-of-pocket costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Guaranteed Obligations and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (x) any renewal, extension or modification which Mortgagee may grant with respect to any of the Guaranteed Obligations, (y) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof or (z) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Guaranteed Obligations.

**11. Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time, during the term of this Mortgage. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

**12. Security Agreement.** This Mortgage is both a real property Mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property whether now owned or hereafter acquired. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee as security for the Guaranteed Obligations, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (such portion of the Mortgaged Property so subject to the UCC being called in this paragraph the "*Collateral*"). Each Mortgagor's address is as set forth in the first paragraph of this Mortgage. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur and be continuing, Mortgagee in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee



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with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Guaranteed Obligations in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity, structure or place of incorporation, organization or formation of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall file and record such UCC forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, file and record such UCC forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements naming Mortgagee, as secured party, and Mortgagor, as debtor, in connection with the Collateral covered by this Mortgage.

**13. Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagee or Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect its and Mortgagee's interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Guaranteed Obligations, and any such subrogation rights shall constitute additional security for the payment of the Guaranteed Obligations.

**14. Marshaling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all such Persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Guaranteed Obligations, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Guaranteed Obligations or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Guaranteed Obligations or of any of the collateral security therefor; and Mortgagee may foreclose, or Mortgagee may exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner



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impair the Guaranteed Obligations or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

**15. Relationship of Mortgagee and Mortgagor.** The relationship between Mortgagor and Mortgagee is solely that of mortgagor and mortgagee and debtor and creditor. The Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of the Note, this Mortgage or any of the Loan Documents shall be construed to as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor and mortgagor and mortgagee.

**16. Notices.** All notices, demands, requests and other communications provided for herein shall be given or made in writing in the manner specified in the Loan Agreement.

**17. Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

**18. Headings.** The paragraph headings in this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**19. Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

**20. Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "*Mortgagor*" shall mean "each Mortgagor and any subsequent owner or owners of a fee interest in the Mortgaged Property or any part thereof," the word "*Mortgagee*" shall mean "Mortgagee and any subsequent holder of the Note," the words "*Mortgaged Property*" shall include any portion of the Mortgaged Property and any interest therein, the word "*including*" means "including but not limited to" and the words "*attorneys' fees*" shall include any and all attorneys' fees, paralegal and law clerk fees, including, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and collateral and enforcing its rights hereunder.

**21. Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Guaranteed Obligations, or any part thereof.

**22. Assignments.** This Mortgage shall be binding upon Mortgagor and its successors and assigns (including, without limitation, Mortgagor's estate, executors, administrators, legal representatives, nominees, heirs and beneficiaries) and shall inure to the benefit of Mortgagee, its participants and its co-lenders in the Loan, and each of their respective successors and assigns. Mortgagee shall have the right to assign or transfer its rights under this Mortgage in connection with any assignment of the Loan and the Loan Documents. Any assignee, participant or transferee of Mortgagee shall be entitled to all the benefits afforded to Mortgagee under this Mortgage. Mortgagor shall not have the right to assign or transfer its

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rights or obligations under this Mortgage, except in accordance with the provisions of the Loan Agreement, without the prior written consent of Mortgagee (which consent may be granted or denied in Mortgagee's sole and absolute discretion), and any attempted, but otherwise prohibited, assignment or transfer without such consent shall be null and void.

**23. Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES (TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW) NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

**24. Consents.** Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

**25. Employee Benefit Plan.** During the term of this Mortgage Mortgagor shall take no action that would cause it to become, and shall not transfer any interests to, an "employee benefit plan" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under the state statutes having the same or similar effect as federal law with respect to "employee benefit plans" as defined in 29 C.F.R. Section 2510.3-101. Mortgagor shall protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, damage and expense (including all attorneys' fees, excise taxes and costs of correcting any prohibited transaction or obtaining an appropriate exemption) that Mortgagee may incur as a result of Mortgagor's breach of this covenant. This covenant and indemnity shall survive the extinguishment of the lien of this Mortgage by foreclosure or action in lieu thereof; furthermore, the foregoing indemnity shall supersede any limitations on Mortgagor's liability under any of the Loan Documents.

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## 26. No Election of Remedies.

(a) The Guaranteed Obligations is now or may hereafter be secured by one or more other mortgages, deeds of trust and/or other security agreements (individually and collectively, as the same may be amended and in effect from time to time, herein collectively called the "*Other Security Instruments*"), which cover or will hereafter cover other real and/or personal property collateral (the "*Other Collateral*"). The Other Security Instruments will secure the Guaranteed Obligations and the performance of the other covenants and agreements of Mortgagor set forth in the Loan Documents. Upon the occurrence and during the continuation of an Event of Default, Mortgagee may proceed under this Mortgage and/or any or all the Other Security Instruments against either the Mortgaged Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Mortgaged Property and/or the Other Collateral marshaled upon any foreclosure of this Mortgage or any Other Security Instrument.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Mortgagee in this Mortgage or the other Loan Documents, in the case of an Event of Default, then, to the extent permitted under applicable law: (i) Mortgagee shall have the right to pursue all of the rights and remedies under this Mortgage and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Mortgagee in its sole and absolute discretion, shall determine from time to time, (ii) Mortgagee shall not be required to either marshal assets, sell the Mortgaged Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Mortgaged Property and/or any Other Collateral, (iii) the exercise by Mortgagee of any remedies against any one item of Mortgaged Property and/or any Other Collateral will not impede Mortgagee from subsequently or simultaneously exercising remedies against any other item of Mortgaged Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Mortgagee herein shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the Mortgaged Property and all Mortgaged Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Guaranteed Obligations, and (v) Mortgagee may resort for the payment of the Guaranteed Obligations to any security held by Mortgagee in such order and manner as Mortgagee in its discretion, may elect and Mortgagee may take action to recover the Guaranteed Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.

(c) To the extent permitted under applicable law, without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may, at any time (in Mortgagee's sole and absolute discretion, but Mortgagee shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Mortgagee to Mortgagor of any such written instrument of release, this Mortgage shall no longer secure such obligations of Mortgagor so released.

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**27. Governing Law.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the Liens created pursuant to this Mortgage (other than the creation of Liens on the Mortgaged Property that is not real property), this Mortgage shall be governed by, and construed in accordance with, the laws of the State of Minnesota (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth in this paragraph and to the fullest extent permitted by the law of such State, the law of the State of New York shall govern all matters relating to this Mortgage and the other Loan Documents and all of the indebtedness or obligations arising hereunder or thereunder. This choice of law is made pursuant to New York General Obligation Law Section 5-1401. All provisions of the Loan Agreement incorporated herein by reference shall be governed by, and construed in accordance with, the laws of the State of New York.

**28. Exculpation.** The liability of Mortgagor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

## **29. Non-Borrower Mortgagor.**

(a) **Defenses.** Mortgagor hereby waives any defense it may now or hereafter have that relates to: (i) any disability or other defense of Borrower or other person; (ii) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (iii) the application of the proceeds of any Obligation, by Borrower or other person, for purposes other than the purposes represented to Mortgagor by Borrower or otherwise intended or understood by Mortgagor or Borrower; (iv) any act or omission by Lender which directly or indirectly results in or contributes to the release of Borrower or other person or any collateral for any Obligation; (v) the unenforceability or invalidity of any collateral assignment (other than this Mortgage) or guaranty with respect to any Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Obligation; (vi) any failure of Lender to marshal assets in favor of Mortgagor or any other person; (vii) any modification of any Obligation, including any renewal, extension, acceleration or increase in interest rate; (viii) any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Mortgagor's rights of subrogation and reimbursement against the principal; (ix) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (x) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (xi) the election by Lender, in any bankruptcy proceeding of any person of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (xii) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (xiii) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (xiv) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further waives any and all rights and defenses that Mortgagor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Lender may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Borrower and (2) if Lender forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (B) Lender may collect from Mortgagor even if Lender, by foreclosing on the real property Collateral, has destroyed any right Mortgagor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses



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Mortgagor may have because Borrower's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor.

(b) Subrogation. Mortgagor hereby waives, until such time as all Obligations are fully performed: (i) any right of subrogation against Borrower that relates to any Obligation; (ii) any right to enforce any remedy Mortgagor may now or hereafter have against Borrower that relates to any Obligation; and (iii) any right to participate in any collateral now or hereafter assigned to Lender with respect to any Obligation.

(c) Borrower Information. Mortgagor warrants and agrees: (i) that Lender would not make the Loan but for this Mortgage; (ii) that Mortgagor has not relied, and will not rely, on any representations or warranties by Lender to Mortgagor with respect to the credit worthiness of Borrower or the prospects of repayment of any Obligation from sources other than the Mortgaged Property; (iii) that Mortgagor has established and/or will establish adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of Borrower; (iv) that Mortgagor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition; (v) that Lender shall not have any duty to disclose or report to Mortgagor any information now or hereafter known to Lender with respect to Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (vi) that Mortgagor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

(d) Reinstatement of Lien. Lender's rights hereunder shall be reinstated and revived, and the enforceability of this Mortgage shall continue, with respect to any amount at any time paid on account of any Obligation which Lender is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to Borrower.

(e) Lawfulness and Reasonableness. Mortgagor warrants that all of the waivers in this Mortgage are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Lender, Borrower and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

(f) Enforceability. Mortgagor hereby acknowledges that: (i) the obligations undertaken by Mortgagor in this Mortgage are complex in nature, and (ii) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (iii) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Mortgagor of all such defenses, and (iv) Mortgagor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Mortgagor does hereby represent and confirm to Lender that Mortgagor is fully informed regarding, and that Mortgagor does thoroughly understand: (1) the nature of all such possible defenses, and (2) the circumstances under which such defenses may arise, and (3) the benefits which such defenses



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might confer upon Mortgagor, and (4) the legal consequences to Mortgagor of waiving such defenses. Mortgagor acknowledges that Mortgagor makes this Mortgage with the intent that this Mortgage and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

(g) **Disclosure of Information; Participants.** Mortgagor understands and agrees that Lender may elect, at any time, to sell, assign, or participate all or any part of their respective interests in the Loan, pursuant to the terms of the Loan Agreement, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Lender's sole discretion. Mortgagor further agrees that Lender may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (i) the Mortgaged Property and its operation; (ii) any party connected with the Loan (including, without limitation, the Mortgagor, Borrower, any partner of Borrower and any guarantor); and/or (iii) any lending relationship other than the Loan which Lender may have with any party connected with the Loan.

## **30. Local Law Provisions**

(a) **Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Section 30 and the other provisions of this Mortgage and other Loan Documents, or to the extent, and only to the extent, any of the provisions in this Section 30 conflict with, or are ambiguous when read together with, any of the provisions of this Mortgage, the provisions of this Section 30 shall govern. The provisions of this Section 30 are intended to supplement and not replace or limit the remedies and other terms and provisions contained in the Mortgage and other Loan Documents, except to the extent necessary to comply with Illinois.

(b) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq., as amended from time to time, the "Foreclosure Act"), the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act;

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default of Borrower or Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law;

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure;

(e) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Foreclosure Act) or residential real estate (as defined in Section 15-1219 of the

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Foreclosure Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Foreclosure Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law;

(f) In addition to any provision of this Mortgage authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Foreclosure Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities and duties as provided for in the aforementioned sections of the Foreclosure Act;

(g) The maximum principal indebtedness secured by this Mortgage shall not exceed \$19,500,000;

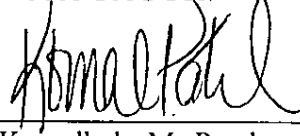
(h) Mortgagor represents, warrants and covenants that: (a) the Loan is a business loan, as that term is used in Section 4(1)(c) of the Interest Act (815 ILCS 205); (b) all of the proceeds of the Loan will be used for business purposes in Mortgagor's and Borrower's business; and (c) Mortgagor's and Borrower's business is a commercial enterprise carried on for the purpose of investment or profit; and

(i) The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of the Illinois Compiled Statutes. As used herein, "you" means Borrower and Mortgagor and "we" means Lender: Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.



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MORTGAGOR:



Komalbala M. Patel, an Individual

STATE OF Illinois )  
 ) ss:  
COUNTY OF Cook )

On the 24<sup>th</sup> day of July, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Komalbala M. Patel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public



MY COMMISSION EXPIRES 4/30/2021

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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## EXHIBIT "A"

### Legal Description

UNITS 1504, 1705, 1804, 1907, 2207, 2304, 2422, 2919, 3822, P-13, P-252, P-259, P-381, P-417, AND P-434 IN THE 235 W. VAN BUREN CONDOMINIUMS, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF LOTS 65, 66, 67, 68, 69, 70, 71, 72, 73 AND 74 (TAKEN AS A TRACT) IN BLOCK 50 IN SCHOOL SECTION ADDITION TO CITY OF CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0915934034, TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.



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Perm tax#

17-16-238-028-1026  
(affects unit 1504)

17-16-238-028-1071  
(affects unit 1705)

17-16-238-028-1092  
(affects unit 1804)

17-16-238-028-1115  
(affects unit 1907)

17-16-238-028-1157  
(affects unit 2304)

17-16-238-028-1179  
(affects unit 2422)

17-16-238-028-1452  
(affects unit P-252)

17-16-238-028-1505  
(affects unit P-381)

17-16-238-028-1521  
(affects unit P-417)

17-16-238-028-1534  
(affects unit P-434)

17-16-238-028-1749  
(affects unit 2207)

17-16-238-028-1999  
(affects unit 3822)

17-16-238-028-2128  
(affects unit P-259)

17-16-238-028-2238  
(affects unit P-13)

17-16-238-028-2271  
(affects unit 2919)

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